

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Application of <i>Computer Inquiry</i> and Title II Common-Carriage Requirements)	WC Docket No. 04-405
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**COMMENTS
OF
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

The National Exchange Carrier Association, Inc. (NECA) hereby comments on the petition of BellSouth for forbearance regarding incumbent local exchange carrier (ILEC) provisioning of broadband services.¹

Specifically, BellSouth requests that the Commission forbear from applying its “*Computer Inquiry*”² requirements and Title II common carrier regulations to stand-alone

¹ Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of *Computer Inquiry* and Title II Common-Carriage Requirements, Public Notice, WC Docket No. 04-405, DA 04-3507 (Nov. 3, 2004) (*Public Notice*).

² See Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities, Docket No. 16979, Final Decision and Order, 28 FCC 2d 267 (1971); Amendment of Section 64.702 of the Commission’s Rules and Regulations, Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980); Computer III Further Remand Proceedings: Bell Operating Co. Provision of Enhanced Services, CC Docket No. 95-20, 1998 Biennial Review—Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 98-10, Report and Order, 14 FCC Rcd 4289 (1999) (collectively, *Computer Inquiry*).

ILEC broadband transport services.³ NECA supports BellSouth’s petition, as it correctly seeks to align the need for regulation of new advanced services with marketplace realities in the areas served by BellSouth.

In considering deregulatory options, however, the Commission should recognize that not all ILECs are similarly situated. Tariff and pooling options must remain available to rural carriers who seek to offer broadband transport services, including basic digital subscriber line (DSL) transmission. This regulatory framework has and will continue to promote deployment of advanced services and networks in rural America.

The Commission has recognized that widespread broadband infrastructure deployment has become “the central communications policy objective of the day,”⁴ and has explained that its broadband policymaking is guided by a number of principles, including the Congressionally-mandated goal to encourage the ubiquitous availability of broadband to all Americans.⁵ Advocates of advanced service deregulation correctly point

³ Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of *Computer Inquiry* and Title II Common-Carriage Requirements, WC Docket No. 04-405 (filed Oct. 27, 2004) (*BellSouth Petition*) at 33.

⁴ *See, e.g.*, Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers, CC Docket No. 02-33, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket Nos. 95-20, 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Wireline Broadband NPRM*), ¶ 1.

⁵ Wireline Broadband NPRM, ¶ 3. *See also* Statement of Chairman Michael Powell in Availability of Advanced Telecommunications Capability in the United States, GN Docket No. 04-54, Fourth Report to Congress, FCC 04-208 (rel’d Sept. 9, 2004) (“The Commission’s role—and my mission—is to continue to champion and facilitate higher-speed, more capable platforms that can run the applications of tomorrow.”)

out that imposition of unnecessary economic regulation on new services is more likely to impede than foster investment and innovation.⁶

And yet, mandatory deregulation of standalone broadband transmission services may also impede the progress of broadband deployment in some rural areas, where the exceptionally high cost of providing service may prevent smaller telephone companies from offering such services on a deregulated basis.

This is especially true of NECA's pool members that operate in sparsely populated areas of the country and continue to face widely varying geographic, demographic, technological and economic challenges when deploying advanced telecommunications. Since 1989, NECA has conducted biennial surveys of the technical capabilities of small rural carriers that participate in NECA's Traffic Sensitive (TS) tariff, publishing this information as the *NECA Access Market Survey* or *AMS*.⁷ NECA's 2003 *AMS* shows that over half of the surveyed companies serve areas greater than 200 square miles, often from a single switch.⁸ Many companies offering DSL via the NECA tariff serve study areas with fewer than 5000 access lines. These companies typically serve fewer than ten customers per square mile and require extensive cable and transmission equipment to provide even basic services.

⁶ See Wireline Broadband NPRM, ¶¶ 5-6. See also The Jeff Pulver Blog, "December 14, 2004, Another Chapter in Jeff's Book on the Evolution of IP Communications Policy in the United States," <http://192.246.69.231/jeff/personal/archives/001448.html> (viewed Dec. 14, 2004).

⁷ NECA, 2003 Access Market Survey: Fulfilling the Digital Dream, http://www.neca.org/print/NECA_155_1152.asp (2003 *AMS*).

⁸ *Id.* at 4-5.

Current levels of broadband deployment in small rural markets⁹ simply would not be possible without the benefits of NECA's tariff and pools. Participation in NECA's tariff and pools provides for efficient and timely tariffing of new services as well as risk sharing among pool members. Pooling provides the stability necessary to encourage small rural companies to deploy advanced broadband services. NECA continually updates the tariff to include the latest service arrangements and technologies. Further, tariff participants are spared the task of developing, filing and defending their own tariffs, saving time and money. Related revenue pools offer stable monthly cash flows and buffer members against unexpected demand reductions or increased costs caused by bankruptcies, natural disasters or loss of a large customer. The security that pooling offers also reduces the risks incurred when a carrier deploys a new technology.

An advantage of the "forbearance" (as opposed to "classification") approach to deregulating advanced services is that it permits the Commission to continue to apply traditional Title II regulation where warranted by marketplace and economic factors. In this regard, NECA notes that the deregulatory approach suggested in the BellSouth Petition should not preclude the Commission from allowing other LECs to tariff broadband services as common carrier offerings.¹⁰

⁹ Some 70% of NECA TS pool participants provide DSL under the terms of the tariff. *2003 AMS* at 8. Preliminary data for the next *AMS* suggest the number now stands at 79%.

¹⁰ The Commission will also need to clarify universal service contribution obligations in this context, ensuring that all service providers are required to contribute in an even-handed manner. *Accord*, Comments of BellSouth in WC Docket No. 04-36 (May 28, 2004) at 48-49.

Small and large LECs alike recognize that retaining the DSL tariffing option is desirable,¹¹ and no other party would appear to object to the continued availability to rural LECs of DSL tariffing and pooling options.¹² Given the demonstrated benefits of and support for DSL transmission services tariffing and pooling options, the Commission should clarify that rural LECs may continue to opt to tariff and pool DSL transmission services when it resolves the BellSouth Petition.

Respectfully submitted,

**NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.**

By: /s/ Richard A. Askoff
Richard A. Askoff
Clifford C. Rohde
Its Attorneys

80 S. Jefferson Rd.
Whippany, NJ 07981
Tel. +1 973/884-8000

¹¹ BellSouth seeks only a lifting of the requirement to tariff such services, not elimination of the option to tariff them. *See* BellSouth Petition at 1. SBC, which filed a similar deregulatory petition earlier in 2004, appeared to contemplate that carriers would be able to continue to tariff basic DSL transmission services even were its petition granted. *See* SBC, Petition of SBC Communications, Inc. For Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No. 04-29 (filed Feb. 5, 2004) (*SBC "IP Platform Services" Petition*) at 9-10. The Commission recently extended the statutory deadline until May 5, 2005, to resolve the SBC Petition. Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No. 04-29, Order, DA 04-3844 (Wire. Comp. Bur., rel'd Dec. 7, 2004).

¹² *See generally* Comments (filed on or about May 28, 2004) and Reply Comments (filed on or about Jul. 14, 2004) in Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No. 04-29. *See in particular* Comments of USTA at 31; Comments of NTCA at 13-15; Comments of OPASTCO at 7-9; Comments of GVNW Consulting, Inc. at 10; Comments of NECA at 14-17.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the NECA's Comments was served this 20th day of December 2004, by electronic filing and e-mail, to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(via ECFS)

Janice M. Myles
Wireline Competition Bureau
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554
(via e-mail)

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, S.W.
Washington, DC 20554
(via e-mail)